

7 May 2019
[79–19]

Call for submissions – Application A1166

Reduction in minimum alcohol for Tequila

FSANZ has assessed an application made by Spirits New Zealand Inc. to lower the minimum percentage of alcohol by volume (alc/vol) for Tequila only specified in Standard 2.7.5 of the Australia New Zealand Food Standards Code (the Code) from 37% to 35%. This application pertains only to spirits using the Tequila geographical indication (GI). FSANZ has prepared a draft food regulatory measure. Pursuant to section 31 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), FSANZ now calls for submissions to assist consideration of the draft food regulatory measure.

For information about making a submission, visit the FSANZ website at [information for submitters](#).

All submissions on applications and proposals will be published on our website. We will not publish material that that we accept as confidential, but will record that such information is held. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1991*. Submissions will be published as soon as possible after the end of the public comment period. Where large numbers of documents are involved, FSANZ will make these available on CD, rather than on the website.

Under section 114 of the FSANZ Act, some information provided to FSANZ cannot be disclosed. More information about the disclosure of confidential commercial information is available on the FSANZ website at [information for submitters](#).

Submissions should be made in writing; be marked clearly with the word 'Submission' and quote the correct project number and name. While FSANZ accepts submissions in hard copy to our offices, it is more convenient to receive submissions electronically through the FSANZ website via the link on [documents for public comment](#). You can also email your submission directly to submissions@foodstandards.gov.au.

There is no need to send a hard copy of your submission if you have submitted it by email or via the FSANZ website. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

DEADLINE FOR SUBMISSIONS: 6pm (Canberra time) 18 June 2019

Submissions received after this date will not be considered unless an extension had been given before the closing date. Extensions will only be granted due to extraordinary circumstances during the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters.

Questions about making submissions or the application process can be sent to standards.management@foodstandards.gov.au.

Hard copy submissions may be sent to one of the following addresses:

Food Standards Australia New Zealand
PO Box 5423
KINGSTON ACT 2604
AUSTRALIA
Tel +61 2 6271 2222

Food Standards Australia New Zealand
PO Box 10559
The Terrace WELLINGTON 6143
NEW ZEALAND
Tel +64 4 978 5630

Table of contents

EXECUTIVE SUMMARY	3
1 INTRODUCTION	4
1.1 THE APPLICANT	4
1.2 THE APPLICATION	4
1.3 THE CURRENT STANDARDS	4
1.3.1 <i>Identity and compositional requirements</i>	4
1.3.2 <i>Restriction on the use of geographical indications</i>	4
1.4 INTERNATIONAL STANDARDS	5
1.4.1 <i>Codex Alimentarius</i>	5
1.4.2 <i>European Union</i>	5
1.4.3 <i>Canada</i>	5
1.4.4 <i>International recognition of the Tequila Geographic indications (GI)</i>	5
1.5 REASONS FOR ACCEPTING APPLICATION	6
1.6 PROCEDURE FOR ASSESSMENT	6
2 SUMMARY OF THE ASSESSMENT	7
2.1 RISK ASSESSMENT	7
2.2 RISK MANAGEMENT	7
2.3 RISK COMMUNICATION.....	7
2.3.1 <i>Consultation</i>	7
2.3.2 <i>World Trade Organization</i>	7
2.4 FSANZ ACT ASSESSMENT REQUIREMENTS	8
2.4.1 <i>Section 29</i>	8
2.4.2 <i>Subsection 18(1)</i>	9
2.4.3 <i>Subsection 18(2) considerations</i>	10
3 DRAFT VARIATION	10
4 REFERENCES	10
ATTACHMENT A – DRAFT VARIATION TO THE <i>AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE</i>	12
ATTACHMENT B – DRAFT EXPLANATORY STATEMENT.....	14

Supporting document

The documents which informed the assessment of this application are available on the [FSANZ website](#).

Executive summary

Food Standards Australia New Zealand (FSANZ) received an application from Spirits New Zealand on 6 June 2018 to lower the minimum alcohol percentage specified in the Australia New Zealand Food Standards Code (the Code) for Tequila only, from 37% to 35% alc/vol.

Spirits New Zealand state that the proposed amendment is needed to ensure that all spirits legally entitled to use the Tequila geographical indication (GI) under the relevant laws of Mexico can be sold in New Zealand and Australia. Geographical indications identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

At present, Standard 2.7.5 requires all spirits to have a minimum content of 37% alc/vol. The official Mexican rules for the Tequila GI allow authentic Tequila to be produced to a minimum content of 35% alc/vol. Therefore, some products legally entitled to use the Tequila GI are excluded from the New Zealand and Australian markets.

Spirits New Zealand consider that the change would give consumers greater choice across the full range of products entitled to use the Tequila GI, be consistent with the recognition of the Tequila GI by the governments of New Zealand and Australia, and avoid unnecessary obstacles to trade.

After assessing the application, FSANZ decided to prepare a draft variation to the Code to lower the minimum alcohol percentage for Tequila from 37% to 35% alc/vol.

An assessment of public health and safety was not considered necessary by FSANZ given the nature of the changes sought by the application.

FSANZ's assessment considered any potential economic effects on all stakeholders including consumers, industry and government. Based on the available information, FSANZ's assessment was that the benefits of the proposed amendment outweigh any associated costs. Nevertheless, FSANZ would welcome further comment on the potential costs and benefits of the proposed amendment via submissions.

1 Introduction

1.1 The Applicant

Spirits New Zealand is the national trade organisation representing New Zealand's leading producers, distributors, brand owners, importers and exporters of premium spirits and spirit-based drinks. They represent over 98 per cent of spirit industry interests in New Zealand.

1.2 The application

This application is seeking to lower the minimum alcohol percentage specified in the Code for Tequila only, from 37% to 35% alc/vol. This will ensure that all spirits legally entitled to use the Tequila GI under the relevant laws of Mexico can be sold in New Zealand and Australia. The official Mexican requirements for Tequila allow for a minimum percentage of 35% alc/vol, whereas the Code specifies that all foods sold as a spirit, including Tequila, must contain at least 37% alc/vol.

1.3 The current standards

Australian and New Zealand food laws require food for sale to comply with the following requirements of the Code.

1.3.1 *Identity and compositional requirements*

Subsections 1.1.2—2 and 2.7.5—2 of the Code provide a definition and compositional requirements for a spirit.

spirit means an alcoholic beverage consisting of:

- a) a potable alcoholic distillate, including whisky, brandy, rum, gin, vodka and tequila, produced by distillation of fermented liquor derived from food sources, so as to have the taste, aroma and other characteristics generally attributable to that particular spirit; or
- b) such a distillate with any of the following added during production:
 - i. water;
 - ii. sugars;
 - iii. honey;
 - iv. spices.

Subsection 2.7.5—3(3) of the Code requires that “A food that is sold as a spirit must be a spirit and contain at least 37% alcohol by volume.”

Section 1.1.1—13 specifies that if a purchaser is likely to assume that the food was a spirit, it must be a spirit and hence contain at least 37% alcohol by volume.

1.3.2 *Restriction on the use of geographical indications*

Subsection 2.7.5—4 further provides that Tequila made in accordance with the relevant requirements specified by the Mexican Government can use the name Tequila.

2.7.5—4 *Restriction on the use of geographical indications*

- 1) A geographical indication must not be used in relation to a spirit, even where the true origin of the spirit is indicated or the geographical indication is used in translation or accompanied by expressions such as ‘kind’, ‘type’, ‘style’, ‘imitation’ or the like, unless the spirit has been produced in the country, locality or region indicated.

- 2) A spirit lawfully exported under a geographical indication, but bottled other than in the territory, locality or region indicated by the geographical indication must not be sold under that geographical indication:
 - a. unless the concentration of alcohol by volume in the spirit is at a level permitted under the laws for that geographical indication of the territory, locality or region indicated by that geographical indication; or
 - b. if any other distinctive quality or characteristic of the spirit is such as to mislead or deceive the public as to the nature of the product identified by the geographical indication.
- 3) In this section:

geographical indication means an indication, whether express or implied:

- a. which identifies a spirit as originating in a particular country, locality or region; and
- b. where a given quality, reputation or other characteristic of the spirit is essentially attributable to its origin in that particular country, locality or region.

1.4 International standards

1.4.1 Codex Alimentarius

There is no commodity committee or commodity standard for spirits generally, or Tequila specifically, in the Codex Alimentarius standards, meaning there is no formal definition or specification for such products. For the purposes of the General Standard for Food Additives (GSFA), Tequila is specifically named as being included within Category 14.2.6 Distilled spirituous beverages containing more than 15% alcohol. The GSFA does not prescribe a minimum alcohol content for Tequila at 35% alc/vol (Codex STAN 192-1995).

1.4.2 European Union

The 'Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks' (97/361/EC), protects Tequila as a product made exclusively in accordance with the laws of Mexico. Tequila is not specified as a category of spirit drinks within the relevant EU directive, and therefore it falls within the 15% minimum alcohol content specified generically for such products (EC 110/2008). Consequently, Tequila is both a protected name for Mexican products within the EU and it can be placed on the EU market at the minimum content specified in Mexican law.

1.4.3 Canada

Spirits may only be sold under the name Tequila if it has been manufactured in Mexico in accordance with the laws and regulations of Mexico governing the manufacture of Tequila (Spirit Drinks Trade Act, S.C. 2005). There is no minimum percentage alc/vol specified in Canadian law for spirits generally, including Tequila. As such, Tequila is marketed in Canada at the minimum content specified by Mexican law.

1.4.4 International recognition of the Tequila Geographic indications (GI)

GI identifies a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. New Zealand, Australia and Mexico are signatories to this definition of 'geographical indication', contained in Article 23 the WTO (World Trade Organization) Agreement on Trade Related Aspects of Intellectual Property (WTOa).

The Tequila GI is one of the most widely recognised spirits GIs in the world. It became recognised in Mexico in 1974 and subsequently registered in 1978 with the World Intellectual Property Organisation (WIPO) pursuant to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (WIPOa).

The Tequila GI is recognised in international agreements between Mexico and 10 other countries as well as the European Union. It is also registered as a GI or a brand or certification mark in at least 10 countries as well as in the European Union (WIPOb, Consejo Regulador de Tequila).

1.5 Reasons for accepting application

The application was accepted for assessment because:

- it complied with the procedural requirements under subsection 22(2)
- it related to a matter that warranted the variation of a food regulatory measure.

1.6 Procedure for assessment

The application is being assessed under the General Procedure.

2 Summary of the assessment

2.1 Risk assessment

The scope of this application was confined to permitting a slight reduction in the minimum alcohol content of Tequila, with no other changes to the Tequila spirit including consumption patterns. On this basis, FSANZ did not consider it necessary to undertake a public health and safety assessment as there would be no change to the current risks associated with this product.

2.2 Risk management

The options available to FSANZ, after assessment, were to reject the application or to prepare a draft variation to amend the Code to lower the minimum alcohol percentage specified in the Code for Tequila only, from 37% to 35% alc/vol.

FSANZ understands, in recommending a lower alc/vol percentage for Tequila only, that:

- Tequila would still be subject to a minimum alc/vol percentage
- there are no other aspects of the spirit Tequila that would change relating to this application
- consumers will have a greater choice across the full range of products entitled to use the Tequila GI
- a reduction in the minimum alc/vol percentage will be consistent with the recognition of the Tequila GI internationally
- unnecessary obstacles to trade can be avoided.

FSANZ's conclusion, after having regard to assessment criteria prescribed by the FSANZ Act (see section 2.4) and the above points plus the direct and indirect benefits to industry and consumers, is that amendment of the Code as requested by Spirits New Zealand is warranted.

FSANZ therefore prepared a draft variation to amend the Code to lower the minimum alcohol percentage specified in the Code for Tequila only, from 37% to 35% alc/vol.

2.3 Risk communication

2.3.1 Consultation

Consultation is a key part of FSANZ's standards development process. FSANZ developed and applied a basic communication strategy to this application. All calls for submissions are notified via the Food Standards Notification Circular, media release, FSANZ's social media tools and Food Standards News.

The process by which FSANZ considers standard development matters is open, accountable, consultative and transparent. Public submissions are called to obtain the views of interested parties on issues raised by the application and any potential economic effects of regulatory options.

The draft variation will be considered for approval by the FSANZ Board taking into account public comments received from this call for submissions.

2.3.2 World Trade Organization

As members of the WTO, Australia and New Zealand are obliged to notify WTO members

where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

The Tequila GI is recognised internationally and amending the Code to reduce the minimum alcohol level from 37% to 35% alc/vol to ensure that all spirits legally entitled to use the GI is unlikely to have a significant effect on international trade. Instead, it would remove a current trading obstacle. Therefore, a notification to the WTO under Australia's and New Zealand's obligations under the WTO Technical Barriers to Trade or Application of Sanitary and Phytosanitary Measures Agreement was not considered necessary.

2.4 FSANZ Act assessment requirements

When assessing this application and the subsequent development of a food regulatory measure, FSANZ has had regard to the following matters in section 29 of the FSANZ Act:

2.4.1 Section 29

2.4.1.1 Consideration of costs and benefits

The direct and indirect benefits that would arise from a food regulatory measure developed or varied as a result of the application outweigh the costs to the community, government or industry that would arise from the development or variation of the food regulatory measure.

The OBPR exempted FSANZ from the need to undertake a formal Regulation Impact Statement in relation to the regulatory change proposed in response to this Application (OBPR reference number: 24954). This was due to OPBR being satisfied that this appears to be a simple alignment of our regulations with importers.

FSANZ, however, has given consideration to the costs and benefits that may arise from the proposed measure for the purposes of meeting FSANZ Act considerations. Section 29(2)(a) of the FSANZ Act requires FSANZ to have regard to whether costs that would arise from the proposed measure outweigh the direct and indirect benefits to the community, government or industry that would arise from the proposed measure.

The purpose of this consideration is to determine if the community, government, and industry as a whole is likely to benefit, on balance, from a move from the status quo. This analysis considers the option to lower the minimum alcohol percentage by volume specified in Standard 2.7.5 of the Code for spirits using the Tequila GI from 37% to 35% alc/vol. FSANZ is of the view that no other realistic food regulatory measures exist, however information received may result in FSANZ arriving at a different outcome.

The consideration of the costs and benefits in this section is not intended to be an exhaustive, quantitative economic analysis of the proposed measures and, in fact, most of the effects that were considered cannot easily be assigned a dollar value. Rather, the assessment seeks to highlight the likely positives and negatives of moving away from the status quo to the option described above.

Costs and benefits of lowering the minimum alcohol percentage for Tequila GI from 37% to 35% alc/vol.

Consumers - There are no likely costs to consumers from the proposed change. The main benefit to consumers would be the availability of a full range of products legitimately entitled to use the Tequila GI.

Industry and business in general - There are no likely costs to industry and business in

general from the proposed change. The main benefit to producers, importers and retailers would be the availability of a full range of products legitimately entitled to use the Tequila GI. The proposed change is unlikely to result in any significant commercial advantage for importers and retailers of Tequila over other products or businesses. Tequila is a comparatively high cost product (the average price is \$NZ\$AU 50 to 60 per litre) that has a small market share. There are no domestic producers of Tequila GI.

Government - There would be no costs to government from the proposed change. Benefits would include consistency with the rules of major trading partners and consistency with international recognition of the Tequila GI as outlined above.

International Trade - The proposed change may have a small but positive impact on international trade by removing an unnecessary obstacle to the importation of legitimate Tequila products as outlined above.

Conclusions from cost benefit considerations

FSANZ's assessment is that the direct and indirect benefits that would arise from the option above most likely outweigh the associated costs.

2.4.1.2 Other measures

There are no other measures (whether available to FSANZ or not) that would be more cost-effective than a food regulatory measure developed or varied as a result of the application.

2.4.1.3 Any relevant New Zealand standards

The proposed amendment is consistent with other New Zealand legislation for spirits:

- Section 5 of the *Sale and Supply of Alcohol Act 2012* (NZ Public Act 2012 No. 20) defines a spirit as a potable alcoholic distillate, including whisky, brandy, rum, gin, vodka and tequila that contains at least 23% ethanol by volume.
- Section 6 of the *Geographical Indications (Wine and Spirits) Registration Act 2006* (NZ Public Act 2006 No. 60) defines spirit without defining a minimum alcohol content.

Only the Code specifies a minimum alcohol content for spirits of 37% alc/vol, in Standard 2.7.5(3). This standard applies in both New Zealand and Australia.

2.4.1.4 Any other relevant matters

Other relevant matters are considered below.

2.4.2. Subsection 18(1)

FSANZ has also considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment.

2.4.2.1 Protection of public health and safety

FSANZ considers that there are no additional public health and safety risks related to the proposed amendment relative to existing Tequila spirit.

2.4.2.2 The provision of adequate information relating to food to enable consumers to make informed choices

The reduction in minimum alcohol from 37% to 35% alc/vol will allow spirits produced

according to the relevant laws of Mexico to be named Tequila, including those within the 35-37% alc/vol range. Although Tequila will have a lower percentage alc/vol than currently permitted, alcoholic beverages must be labelled with a statement of alc/vol, providing consumers with information about the alcohol content. This enables informed choices when purchasing Tequila.

2.4.2.3 The prevention of misleading or deceptive conduct

There are no issues identified with this application relevant to this objective.

2.4.3 Subsection 18(2) considerations

FSANZ has also had regard to:

- **the need for standards to be based on risk analysis using the best available scientific evidence**

See section 2.2 above. FSANZ considered the need for formal risk analysis, concluding that it was unnecessary based on the scope of the application.

- **the promotion of consistency between domestic and international food standards**

The Tequila GI is recognised in international agreements between Mexico and 10 other countries as well as the European Union. The proposed change promotes consistency with regards to domestic and international food standards.

- **the desirability of an efficient and internationally competitive food industry**

The proposed change may provide benefits such as consistency with the rules of major trading partners and consistency with international recognition of the Tequila GI.

- **the promotion of fair trading in food**

The proposed change may have a small but positive impact on international trade by removing an unnecessary obstacle to the importation of legitimate Tequila products.

- **any written policy guidelines formulated by the Forum on Food Regulation**

There are no specific policy guidelines that apply to this Application.

3 Draft variation

The draft variation to the Code is at Attachment A and is intended to take effect on gazettal.

A draft explanatory statement is at Attachment B. An explanatory statement is required to accompany an instrument if it is lodged on the Federal Register of Legislation.

4 References

97/361/EC [Agreement between the European Community and the United Mexico States on the mutual recognition and protection of designations for spirit drinks](#). Accessed 21 February 2019

Consejo Regulador de Tequila, [International Protection of the Tequila Designation of Origin](#).

Accessed 12 Dec 2018

EC 110/2008. [Regulation \(EC\) No 110/2008](#) of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks. Accessed 19 Dec 2018.

Codex STAN 192-1995. [Codex General Standard for Food Additives](#) Accessed 25 February 2019.

NZ Public Act 2006 No. 60. [Geographical Indications \(Wine and Spirits\) Registration Act 2006](#). Accessed 21 February 2019.

NZ Public Act 2012 No. 20. [Sale and Supply of Alcohol Act 2012](#). Accessed 21 February 2019.

[Spirit Drinks Trade Act, SC 2005](#), c 39. Accessed 19 Dec 2018.

WTOa. Article 22.1 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) [Section3: geographical indications](#). Accessed 12 Dec 2018.

WIPOa [Lisbon Agreement for the Protection of Appellations of Origin and their International Registration](#). 12 Dec 2018.

WIPOb. [Liquid Gold from the Agave, Geographical Indications and Appellations of Origin](#). Accessed 12 Dec 2018.

Attachments

- A. Draft variation to the *Australia New Zealand Food Standards Code*
- B. Draft Explanatory Statement

Attachment A – Draft variation to the *Australia New Zealand Food Standards Code*

Food Standards (Application A1166 – Reduction in minimum alcohol for Tequila) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The variation commences on the date specified in clause 3 of this variation.

Dated [To be completed by Delegate]

[Insert details of Delegate]

Delegate of the Board of Food Standards Australia New Zealand

Note:

This variation will be published in the Commonwealth of Australia Gazette No. FSC XX on XX Month 2019. This means that this date is the gazettal date for the purposes of clause 3 of the variation.

1 Name

This instrument is the *Food Standards (Application A1166 – Reduction in minimum alcohol for Tequila) Variation*.

2 Variation to a standard in the *Australia New Zealand Food Standards Code*

The Schedule varies a Standard in the *Australia New Zealand Food Standards Code*.

3 Commencement

The variation commences on the date of gazettal.

Schedule

[1] Standard 2.7.5—3 is varied by omitting subsection 2.7.5—3(3), and inserting

- (3) A food that is sold as a spirit must:
 - (a) be a spirit, and;
 - (b) contain no less than:
 - (i) in the case of tequila—35% alcohol by volume; and
 - (ii) otherwise—37% alcohol by volume.

Attachment B – Draft Explanatory Statement

1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

The Authority accepted Application A1166 which seeks a reduction in minimum alcohol percentage requirement for Tequila.

The Authority considered the Application in accordance with Division 1 of Part 3 and has prepared a draft Standard.

2. Purpose

The Authority has prepared a draft variation to amend section 2.7.5—3 of the Code. The amendment will lower the minimum alcohol percentage requirements for Tequila only, from 37% to 35% alc/vol.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

4. Consultation

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of application A1166 will include one round of public consultation following an assessment and the preparation of a draft Standard and associated assessment summary.

A Regulation Impact Statement was not required because the proposed variations to section 2.7.5—3 of the Code are likely to have a minor impact on business and individuals.

5. Statement of compatibility with human rights

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

6. Variation

Item [1] of the draft variation will amend subsection 2.7.5—3(3) of the Code to lower the minimum alcohol percentage prescribed by that subsection for Tequila from 37% alc/vol to 35% alc/vol. The minimum alcohol percentage prescribed by subsection 2.7.5—3(3) for other foods sold as a spirit will remain at 37% alc/vol.